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Idaho National Guard updates Idaho Code of Military Justice

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Brigade Public Affairs

On April 6, members from the Idaho National Guard's legal office met with Governor C.L. "Butch" Otter as he approved and signed into law a new and improved version of the ICMJ.

When Active Duty Military members commit a crime, they fall under exclusive federal jurisdiction as provided in the Uniform Code of Military Justice.

National Guardsmen are subject to the UCMJ when mobilized in support of the Active Duty, however in most circumstances Guardsmen are Citizen-Soldiers and work for their respective states when not mobilized for federal service. They are subject to their own states' codes of military justice when in a traditional drilling status. This dual role can create confusion and frustration when dealing with Guardsmen who step outside the bounds of law.

Each state has its own code of military justice, which lays out procedures and guidelines for transgressors. In 1975, Idaho enacted the Idaho Code of Military Justice governing the conduct of Idaho's Citizen-Soldiers but it has not been updated since. Almost 40 years to the day, Governor C.L. "Butch" Otter signed the new law, which significantly changes the judicial process for Idaho Air and Army National Guardsmen.

"This update is designed to give Guardsmen improved and guaranteed legal counsel throughout the judicial process while also giving commanders more direct and effective control in maintaining discipline and good order in their units," says ICMJ co-author and Attorney Advisor to the Idaho Adjutant General Capt. Stephen Stokes. "We knew the ICMJ needed an update," Stokes says, "and these changes are going to have a huge impact on how effective Idaho's military legal system works."

"The biggest change is that a Soldier or Airman can now be prosecuted for misconduct 24/7 regardless of whether or not they are on orders," Stokes says. Idaho Guardsmen have always been expected to maintain professionalism and excellence in all they do, but under the previous ICMJ, they could not be held criminally responsible for



From left to right: Idaho National Guard Congressional Liaison Mr. Dick Turner; Assistant Adjutant General-Army Brig. Gen. John Goodale; Idaho National Guard Attorney Advisor Capt. Stephen Stokes; Idaho Governor C.L. "Butch" Otter; Idaho National Guard Staff Judge Advocate Maj. Paul Boice; Idaho Army National Guard Senior Enlisted Advisor Command Sgt. Maj. Steven Woodall

their actions outside of drill and annual training periods. Now however, the ICMJ provides legal jurisdiction over Idaho Guardsmen 24/7 for violations of the ICMJ. While Idaho Guardsmen are subject to the ICMJ at all times, the Guard will usually defer to civilian law enforcement before filing charges on the military side for purely "civilian" offenses, i.e. assault, battery, theft, sexual assault, and the like.

Another change is the addition of the Summary Court Martial procedure. "Under the previous ICMJ, it was almost impossible to use Non-Judicial Punishment," Stokes said. If a Soldier elects to turn down NJP, he or she is entitled to a Court Martial. The Previous ICMJ only offered special and general courts martial, both of which required going through the Governor's office and State Supreme Court. This resulted in rarely used NJP but when used, the command always waited with anticipation to see whether a Soldier would turn it down. Now commanders are free to use NJP, since the Summary Court Martial procedure offers a quick judicial review of NJP actions.

"The new ICMJ allows our Guardsmen simplified access to all of their due process rights, while also allowing commanders to serve swift disciplinary action," Stokes explains. "Under the new law, ICMJ transgressors can be sentenced to a

wide range of punishments from a minimum of a suspended reduction in rank to a maximum of ten years confinement," Stokes said.

The new ICMJ does not take effect until July 1, 2015 allowing time for the development of an Idaho Manual for Courts Martial and training on the updated rules. "We don't want to lose good servicemen and women just because of a mistake," Stokes said. "The focus of these changes is to allow us to emphasize rehabilitation and good discipline, while preserving the investment of taxpayer dollars into the training of our teammates," Stokes said.

To learn more about the new ICMJ, contact your unit leadership or the IDNG JAG office at 422-5199. View the ICMJ TAG Leadership Day presentation at https://www.youtube.com/watch?v=6z_n5x_KRB6U

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